

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PHILIP J. SYZEMORE, No. 2:05-cv-0775-MCE-PAN-P

Petitioner,

v.

ORDER

BOARD OF PRISON TERMS, ET AL.,

Respondents.

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Petitioner, a state prisoner proceeding pro se, has filed this Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On November 23, 2005, the magistrate judge filed Findings and Recommendations herein which were served on all parties and which contained notice to all parties that any Objections to the Findings and Recommendations were to be filed within twenty (20) days.

1 Petitioner has filed Objections to the Findings and  
2 Recommendations.

3 In accordance with the provisions of 28 U.S.C.  
4 § 636(b)(1)(C) and Local Rule 72-304, this Court has conducted a  
5 de novo review of this case. Having carefully reviewed the  
6 entire file, the Court rejects the magistrate judge's  
7 recommendation that Respondent's July 5, 2005 Motion to Dismiss  
8 be granted on grounds that the California parole scheme for  
9 indeterminate sentences, as set forth in California Penal Code §  
10 2041, does not give rise to a federally protected liberty  
11 interest pursuant to the undersigned's decision in Sass v. Cal.  
12 Bd. of Prison Terms, 376 F. Supp. 2d 975 (E.D. Cal. 2005). The  
13 Ninth Circuit, however, in Sass v. Cal. Bd. of Prison Terms,  
14 2006 WL 2506393, at \*4 (9<sup>th</sup> Cir. Aug. 31, 2006), recently  
15 disagreed with this Court's Sass analysis, holding that  
16 California law does afford a constitutionally protected liberty  
17 interest in a parole date. Consequently, the Ninth Circuit's  
18 Sass decision undercuts the rationale for recommending that the  
19 instant Amended Motion to Dismiss be granted, and instead  
20 mandates that said Motion be denied.

21 Accordingly, IT IS HEREBY ORDERED that:

22 1. The Findings and Recommendations, filed November 23,  
23 2005, are rejected;

24 2. Respondent's July 5, 2005 Motion to Dismiss is denied;

25 and

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3. Respondents are directed to file a response to Petitioner's Application within thirty (30) days following the date of this Order. Petitioner's reply, if any, shall be filed and served within thirty (30) days following service of an answer.

DATED: September 28, 2006

  
MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE